



Queen's Bench, Montreal.
MR. JUSTICE WÜRTELE'S
Charge to the Grand Jury,

Monday, 2nd November, 1891.

GENTLEMEN OF THE GRAND JURY:

Courts of criminal jurisdiction are instituted for the purpose of bringing wrong-doers to punishment; and the certainty that justice is firmly administered has the effect of deterring others by the dread of punishment from committing crimes, and is a guarantee to the community of tranquility and of security for person and property. But while wrong-doers must be brought to punishment, every care has to be taken that innocent persons should not be lightly accused and subjected to the odium of a trial and the expense of a defence. While, therefore, the law of the land makes provision for the trial and punishment of offenders, it at the same time affords every protection to the innocent when falsely accused. No man can be put upon his trial for a crime laid to his charge until twelve good, true and loyal men of the country, acting as grand jurors, have represented to the court that there is good ground of accusation against him; and no one can be punished for a crime of which he is accused until he has been found guilty by the unanimous verdict of a petty jury, composed of twelve of his fellows.

The grand jury is an appendage of the court and it assists in the administration of criminal justice by presenting offenders for trial. It is the accusing body, but at the same time it stands as a barrier against the injustice of unfounded

prosecutions, and I for one would be loath to see this institution abolished without the substitution in its place of some other equally efficient safeguard. The question of the expediency of the abolition of grand juries has recently been brought to the attention of Parliament, and it is now being discussed in the press. The question is one of importance and worthy of serious consideration, and opinions are divided on the subject. I call your attention to the matter, and I would like to obtain an expression of your views, whether it seems to you desirable to abolish or to continue the system of grand juries. This has been done by a number of grand juries in Ontario.

To bring a wrong-doer to trial, a written accusation of the crime or offence laid to his charge is drawn up. It must set forth with certainty the facts and circumstances essential to constitute the crime or offence, and it must directly charge him with having committed such crime or offence. This written accusation is called a bill of indictment.

To avoid a failure of justice, the crime or offence is sometimes charged or described in different ways; and each separate charge is called a count. Two or more persons may be joined in one bill of indictment, when they have all taken part in the commission of a crime or offence. The principal duty of the grand jury is to receive the bills of indictment which are laid before them and enquire, upon their oaths, and ascertain by the evidence submitted to them, whether there is sufficient cause to call upon the accused to stand their trial. As the grand jury have only to enquire whether there is sufficient ground for calling on the parties accused to answer the accusations brought against them, they hear only the witnesses for the prosecution. A grand jury may find that there is sufficient cause as to the charge in one count of a bill of indictment and may ignore that in another, or as to one defendant and not as to another; but they cannot find a true bill as to

part of a count and no true bill as to the remainder of the same count. When a bill of indictment has been thrown out, another bill against the same person, for the same crime or offence, cannot be preferred and found at the same term of the court, but a fresh bill of indictment may be preferred to and found by the grand jury empannelled at a subsequent term. When a bill has been found, it then becomes and is called an indictment. The panel of a grand jury is composed of 24 jurors; but the grand jury, when organized, must not consist of more than 23, so that the 12 required to indict may be a majority.

In deciding upon a bill of indictment you must be persuaded of its truth by the evidence submitted to you, and you should not rest satisfied with remote probabilities. The names of the witnesses whom it is intended to examine before the grand jury are endorsed on the bill of indictment and they, or such of them as may be necessary, will be brought before you by the Crown Prosecutor, or the officer acting on his behalf. No others can be examined by you unless upon the written order of the presiding judge. The witnesses are to be sworn, as they come into the grand jury room to be examined by your foreman, or by the juror who may for the time being act for him; and your foreman, or such juror, will write his initials against the name, on the back of the bill of indictment, of each witness sworn and examined touching such bill of indictment. Quakers and others who are exempted by law from the obligation of taking an oath may give their evidence after having made a solemn affirmation in accordance with the provisions of section 219 of the Criminal Procedure act. With this difference, you will proceed with respect to these persons as in the case of other witnesses.

If you think, after having heard the evidence and deliberated, that a charge is groundless, you will report that it is not a true bill; but if you are satisfied that the evidence adduced makes out a sufficient case, you will report

that it is a true bill, either in whole or as to certain counts or persons only. In the first case your foreman will endorse on the back of the bill of indictment the words, "No Bill," and in the other case he will endorse upon its back the words, "A True Bill," adding the necessary limitation when you find the accusation founded as to certain counts or persons only. The finding in each case must be signed by your foreman, and he should write below his signature the designation of "Foreman." All bills of indictment upon which you come to a determination, and which are endorsed and signed as I have just mentioned, must be brought by you into the court and handed by your foreman to the Clerk of the Crown, who then, in your presence, states to the court and publicly announces the name of the accused, the charge and your finding.

In making your enquiry you must act without fear, favor or affection, and the oath you have taken will remind you that your decision in all cases must not be influenced by hatred or malice. You are bound by your oath to keep the secrets of the jury room. You will readily understand that it would be most improper and impolitic to disclose the opinions expressed by the various members of the grand jury and what particular persons concurred in or opposed the finding upon a bill of indictment. And, in fact, to disclose to an accused person the evidence which has been given against him would be considered a contempt of court on the part of any one of you doing so, and would be punishable as such.

In proceeding with your investigations you have a right at all seasonable times to apply to the court, to the substitutes of the law officers of the Crown, or to the officers of the court, for advice; but such advice must be restricted to matters of law, for neither the court nor these officers can or should say to you that the facts as shown by the evidence are sufficient to authorize you to find a bill. That is left to your conscience and to your judgment,

bearing always in mind, however, that the accused is not on his trial before you, and that what you have to seek is merely whether there appears at first sight to be sufficient ground to put the accused upon his trial.

The officers prosecuting on behalf of the Crown will lay the bills of indictment before you, and they and the officers of the court will marshal the witnesses and conduct their examination before you; but you can yourselves put any questions you wish to the witnesses so produced, and can call and examine other witnesses, should you think it necessary, obtaining, however, the presiding judge's order for any whose names are not endorsed on the back of the bill of indictment. The counsel representing the Crown and the officers of the court alone have the right to be admitted to your sittings; but they must not be present during your deliberations or when the vote is taken upon any matter before you.

Any person may bring an accusation against another and require it to be investigated. The charge is generally made by laying a sworn information before a magistrate, who holds a preliminary examination and either commits the accused person for trial or discharges him. Sometimes, however, the charge is made by a private prosecutor to the grand jury, without having in the first place laid an information before a magistrate, and he does so by preferring a bill of indictment before them; but you must not take cognizance of any bill of indictment so preferred unless the private prosecutor has first obtained the authorization of the court or of the presiding judge to lay it before you.

Besides the duty of passing on the bills of indictment which may be preferred before you, and which I have called your principal duty, you have several other functions. You have the right to take notice of any crime or offence for which no bill of indictment has been laid before you, of which you may have personal knowledge, or which may be made known to you by testimony given before you.

In such a case you initiate the proceedings by denouncing the crime or offence in a presentment, which you produce in open court and which is publicly read, and afterwards the Clerk of the Crown frames on the charge an indictment, on which the person presented is brought to trial. There is, however, a restriction to this power, and that is that you must obtain the consent of the court or presiding judge before presenting any one for the following offences, viz., perjury, subornation of perjury, conspiracy, obtaining money or other property by false pretences, forcible entry or detainer, nuisance, keeping a disorderly house, or indecent assault.

It is another of your functions to inspect the common jail and the female jail of the district for the purpose of examining their security, sanitary condition and discipline, and to enquire into the case of any person you may find imprisoned therein and not undergoing a sentence, who has not been indicted or who, after having been indicted, has not been duly brought to trial. You may also visit the reformatory prisons and schools and the public lunatic asylums in the district, and report to the court any facts in connection with them to which you may deem it advisable to draw the attention of the provincial Government.

Should it become known to you that any public officer has been guilty of misconduct in office, you may by your presentment call the attention of the proper authorities thereto. Should you be of opinion that any law for the general welfare of the community is not properly carried out, you may, by drawing public attention to the fact, obtain proper enforcement of the law. And in this connection I think that it will not be amiss to allude to an abuse which is allowed to exist in this city, and which is fraught with danger to foot passengers on our streets; I mean the immoderate and reckless driving and horse racing which so many persons indulge in, and which is not only a cause of fright but also the occasion of injury to many and, in some

cases, even of death. These people seem to fancy that they are subject to no regulation and that foot passengers can only use the public streets and highways at their risk and peril. They should, however, know that foot passengers have the right to pass over intersecting streets and to cross from one side of a street to the other, and that persons driving or riding must take proper care not to run them down. Any injury done by wilfulness or by negligence to a pedestrian who conducts himself with proper care, by a person driving or riding, may render such person amenable for a misdemeanor, and sometimes for a more serious offence. Only a few days ago an old man was knocked down early in the evening at the intersection of Craig and Sanguinet streets, through, it is alleged, the careless driving and negligence of a young man. Before the next morning he died from the injuries he had received, and now a bill of indictment will be laid before you, charging the young man with manslaughter.

The charter of the city authorizes the city council to pass by-laws to prevent and punish immoderate driving and horse racing in the streets, and under that power the city council has adopted a by-law under which all persons are prohibited from driving or riding at a rate exceeding six miles to the hour, or in a careless or reckless manner, and from driving or riding faster than a walk when coming out of a cross street into a main or leading street or in turning a corner. It is provided by this by-law that it shall be the duty of the Chief of Police and the officers and men under his command to enforce these rules; but no effort is apparently made to enforce the by-law, which almost seems to have fallen into desuetude. In London, Paris or New-York, on a busy thoroughfare, it is enough for a policeman to raise his hand to instantly stop all circulation on the street; the order given by the agent of the civic authority is at once obeyed in these large cities; but here the order is disregarded and the

agent is reviled. This should not be ; the by-law should be observed and the members of the police force, while in the due exercise of their duties, should be respected and upheld. I draw your attention to this abuse, and I hope that a representation on your part may induce the city council and the police authorities to take steps to abate it and to give to foot passengers the protection to which they are entitled.

And, lastly, all matters appertaining to the proper administration of justice in this district are subjects of enquiry by you and of comment or suggestion in your presentment.

I am pleased to be able to inform you that the number of bills of indictment to be submitted to you is small and that, with the exception of one for the case of manslaughter to which I have a moment ago alluded, they are all for minor offences. The form of indictments has been so simplified that I can dispense with an explanation of the nature of the offences for which bills will be laid before you. If, however, you should require any information, you will find me and the officers of the Crown and of the court ready at all seasonable times to give you such explanations as you may desire.

You will now retire to your room to consider the bills of indictment which will be laid before you and to proceed to the fulfilment of the other functions which appertain to your office.

